

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	
	:	
JOHN SAYBOLT	:	NO. 05-618-2

MEMORANDUM AND ORDER

Gene E.K. Pratter, J.

November 9, 2006

INTRODUCTION

Defendant John Saybolt moves to dismiss the indictment in this case in which he has been charged in the 36-count indictment with conspiracy to defraud the Government, submission of false, fictitious or fraudulent claims and aiding and abetting false claims. The basis for the motion to dismiss is the absence of any specific averment of materiality in the indictment. The Government opposes the Motion. For the reasons that follow, the Court concludes that the Motion will be denied.

DISCUSSION

Mr. Saybolt is charged with violations of Sections 286 and 287 of Title 18 of the United States Code. Congress did not expressly include materiality as an element of the prohibited conduct in either of these provisions. Therefore, the issue becomes one of determining whether, as Defendant urges, the Court should find an implied term of materiality in the statute.

Pursuant to United States v. Wells, 519 U.S. 482 (1997), and United States v. Neder, 527 U.S. 1 (1999), materiality may be found to be implied if a term in the statute has a well-settled

common law meaning that includes materiality as an element that would not raise an inconsistency within the statute. In Wells, the Supreme Court determined that the phrase “false statement” in the context of a statute prohibiting knowingly making such statements to a federally insured bank did not imply the element of materiality. Wells, 519 U.S. at 490. However, examining different statutes - - those prohibiting bank, wire or mail fraud - - the Supreme Court did conclude that fraud crimes include an implied element of materiality. Neder, 527 U.S. at 20.

Application of the Wells and Neder analysis to the statute at issue here, namely, 18 U.S.C. § 287, highlights the need to avoid imposing a materiality element that would engender an inherent inconsistency with legislative intent or precedential authorities. Section 287 prohibits making a claim “knowing such claim to be false, fictitious or fraudulent.” (Emphasis added). Thus, under the Supreme Court’s precedents as applied to this statute, which lists alternative, as opposed to conjunctive, prohibited acts - - one violation, i.e., a false claim, that does not imply a materiality element with one that does, i.e., a fraudulent claim. Defendant has provided no basis on which this Court could or should depart from either the intent of Congress or the Supreme Court’s guidance. To do so would create the very kind of inconsistency the Supreme Court has delineated as a reason not to impose an implied materiality element into a statute. See Neder, 527 U.S. at 25.

Where, as here, the Government is permitted to seek an indictment that charges the defendant in the conjunctive but can satisfy its burden of proof in the disjunctive, see United States v. Navarro, 145 F.3d 580, 591-92 (3d Cir. 1998); United States v. Mallard, 458 F.2d 1136, 1137 (3d Cir. 1972), and in the absence of any contrary suggestion of statutory interpretation by

our Court of Appeals, this Court will not clutter and complicate this legislation with a fundamental feature that Congress did not see fit to include in the first instance.

CONCLUSION

For the foregoing reasons, the Court will deny the Motion To Dismiss Indictment For Failure To Allege Materiality. An appropriate Order accompanies this Memorandum.

BY THE COURT:

Gene E.K. Pratter
United States District Judge

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ORDER

AND NOW, this 9th day of November 2006, upon consideration of Defendant's Motion to Dismiss the Indictment for Failure to Allege Materiality, (Docket Nos. 38 and 39), and the Government's response thereto, (Docket No. 49), Defendant's Motion is **DENIED**.

BY THE COURT:

GENE E. K. PRATTER
UNITED STATES DISTRICT JUDGE